



Massachusetts  
Municipal  
Association



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## ***“An Act to enable the Commonwealth's Administration of the Massachusetts Pollutant Discharge Elimination System”***

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**ISSUE:** Massachusetts is one of only four states in the nation that does not currently have delegation of the National Pollutant Discharge Elimination System Program (NPDES) from the United States Environmental Protection Agency (EPA). The NPDES program is an important water quality program established by the federal Clean Water Act. It is anticipated that the EPA will be facing significant budgetary cuts in the near future. It makes sense for Massachusetts to join the other 46 states to implement this program in order to provide continued protection of our water resources.

**BACKGROUND:** Communities across the nation are beginning to recognize that regulations within the historically isolated water resource “sectors” (i.e. drinking water, wastewater and stormwater) are becoming increasingly interrelated. As such, more progressive communities are already beginning to think about how they could manage these systems in a more economically viable and integrated way. Ironically, any utility or community interested in pursuing the merits of an Integrated Water Management Plan have been thwarted due to the permitting “silos” administered under separate regulatory authorities (drinking water, wastewater and stormwater programs). In Massachusetts both drinking water quality and quantity are regulated by MassDEP, while the NPDES wastewater and MS4 stormwater permits are under the control of the EPA. Communities must deal with all of these regulatory programs simultaneously regardless of what is considered to be most convenient for the regulators. Unlike the regulators, they do not have the luxury of only concentrating on each program one at a time. Integrated planning is not cheap or easy, but if done effectively, can help communities prioritize water resource needs, investments, and benefits – including infrastructure and the environment. Delegation of the NPDES program will help facilitate this effort and it will make it easier for municipalities to coordinate with one agency rather than two. It may also provide opportunities for flexibility in permitting that does not currently exist.

**WHAT THIS LEGISLATION WILL DO:** House Bill 2777, “An Act to enable the Commonwealth's administration of the Massachusetts pollutant discharge elimination system,” sponsored by Governor Charles Baker, will make technical amendments to the Massachusetts Clean Water Act statute to ensure that the state program will conform to the federal program and it allows MassDEP to apply to EPA for delegation. MassDEP would then have to submit a formal application to EPA Region 1 to seek delegation and would have to show that it has the funding, staffing and legal authority necessary to successfully implement the program in order to be approved.

## KEY POINTS:

- Our organizations support funding a Massachusetts NPDES program through a separate line-item in the budget as one way to ensure a reliable revenue stream for the program.
- MassDEP did an analysis that showed that the state is actually proposing to have more staff working on the NPDES program than what EPA currently has dedicated to the Massachusetts permitting program.
- The state should be looking at the individual conditions in a watershed and working with the communities to come up with a plan that will be in the best interest of the watershed given the limited resources at a community's disposal. Our organizations feel a more site specific approach has a better chance of leading to meaningful environment improvement rather than making communities spend money to implement measures that will likely not result in improvement. Having authorization of the NPDES program provides an opportunity for the Commonwealth to be a leader in holistic water management and integrated permitting.
- The current NPDES program as administered by EPA Region 1 has been a quagmire of legal skirmishes between the agency and rivers advocates, followed by costly appeals by municipal permit holders. Permits that are supposed to have five-year terms typically extend for a decade or more while EPA goes through starts and stops of draft permits, revised permits and changes in policy. The Clean Water Act has indeed produced remarkable improvements in most of our waters but in recent years it is despite the NPDES program implementation and not because of it.
- MassDEP has had authorization for the federal Safe Drinking Water Act (SDWA) program for many years and we can unequivocally state that MassDEP has never attempted to administer the SDWA program in a manner that could be construed as less stringent than the federal program. In fact, the record will show that MassDEP usually errs on the side of being more protective than required.
- Our organizations, and their respective members, have long been committed to ensuring water quality protection for both public health and the environment. We look forward to working closely with the legislature and the Baker Administration to ensure that the natural resources of the Commonwealth continue to be protected for the enjoyment of all.

## ACTION REQUESTED:

- **We respectfully request that the Joint Committee on Environment, Natural Resources and Agriculture to give a favorable report to House Bill 2777.**
- **We respectfully request that the legislature support passage of House Bill 2777 this session.**

If you have any questions, please contact the following individuals:

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